

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259
(DCG-JES-JVB)
(consolidated cases)

**UNITED STATES' MOTION TO ENFORCE A DOCUMENT SUBPOENA ISSUED TO
REPRESENTATIVE MIKE SCHOFIELD**

Representative Mike Schofield produced two documents and withheld over 60 in response to a subpoena issued by the United States on June 7, 2022. *See* Schofield Subpoena (Ex. 1). Although Representative Schofield timely produced a privilege log on July 14, 2022, after the United States moved to compel documents withheld by other legislators, legislative privilege issues raised by the Schofield log are similar to those legislative privilege issues already adjudicated by this Court. *See* Schofield Privilege Log (Ex. 2); *League of United Latin American Citizens v. Abbott (LULAC)*, No. 3:21-cv-259, 2022 WL 2921793, at *1 (W.D. Tex. July 25, 2022) (three-judge court), *stayed*, No. 22-50662 (5th Cir. July 27, 2022). With this motion, the United States only challenges Representative Schofield's assertions of legislative privilege.

For the same reasons outlined by the United States in its prior motion, many documents withheld by Representative Schofield on the basis of legislative privilege should be disclosed, and the United States incorporates those detailed arguments by reference. *See* U.S. Mot. 3-4,

ECF No. 351. At minimum, the subpoenaed documents are relevant to questions of discriminatory intent and whether “the policy underlying the State’s . . . use of the contested practice or structure is tenuous” under the discriminatory results test. *LULAC*, 2022 WL 2921793, at *4.

Legislative privilege does not protect the full set of documents over which Representative Schofield has asserted it. As this Court has recognized, legislative privilege does not protect redistricting data and draft maps from disclosure. *See LULAC*, 2022 WL 2921793, at *2-3; U.S. Mot. 9-13; *see also* Schofield Index 1-4 (Ex. 3) (withholding 44 such documents). Similarly, the privilege does not extend to documents exchanged between legislators and interested third parties, such as lobbyists. *See LULAC*, 2022 WL 2921793, at *4; *see also* Schofield Log 4 (DOC_0362808). Finally, assertion of the legislative privilege over a document concerning 2021 Congressional redistricting must yield to the United States’ interest in enforcing the constitutional prohibition on intentional racial discrimination in voting. *See LULAC*, 2022 WL 2921793, at *6; *see also* Schofield Log 1 (DOC_0362785).

For the foregoing reasons, the United States respectfully requests that this Court grant its requested relief. A proposed order is attached hereto.¹

¹ The United States recognizes that portions of this Court’s July 25 order have been administratively stayed pending resolution of an appeal in another matter raising similar issues. *See Order, LULAC v. Patrick*, No. 22-50662 (5th Cir. July 27, 2022) (Ex. 4). Therefore, in the event that this Court orders documents produced pursuant to the instant motion, the United States preemptively agrees to a stay identical in scope and duration to the Fifth Circuit administrative stay of the July 25 order. The United States and Defendants are in the process of negotiating a stipulation to this effect.

Dated: August 12, 2022

JOHNATHAN SMITH
Acting Principal Deputy Assistant Attorney General
Civil Rights Division

REBECCA B. BOND
Acting Deputy Assistant Attorney General
Civil Rights Division

/s/ Daniel J. Freeman

T. CHRISTIAN HERREN, JR.
TIMOTHY F. MELLETT
DANIEL J. FREEMAN
JANIE ALLISON (JAYE) SITTON
MICHELLE RUPP
JACKI L. ANDERSON
JASMIN LOTT
HOLLY F.B. BERLIN
Attorneys, Voting Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

CERTIFICATE OF CONFERRAL

I hereby certify that on August 12, 2022, counsel for the United States met and conferred with counsel for Representative Schofield concerning the subject of this motion. Counsel for Representative Schofield opposed the relief sought.

/s/ Daniel J. Freeman

Daniel J. Freeman

Voting Section

Civil Rights Division

U.S. Department of Justice

daniel.freeman@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2022, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system, which will send notification of this filing to counsel of record.

/s/ Daniel J. Freeman

Daniel J. Freeman

Voting Section

Civil Rights Division

U.S. Department of Justice

daniel.freeman@usdoj.gov